

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN MACK COLE**, on April 9, 1999 at 10:00 A.M., in Room 331 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Don Hargrove, Vice Chairman (R)  
Sen. Jon Tester (D)  
Sen. Jack Wells (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Keri Burkhardt, Committee Secretary  
David Niss, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 350, 4/1/1999  
Executive Action: None.

**HEARING ON HB 350**

**Sponsor:** REPRESENTATIVE MATT BRAINARD, HD 62, MISSOULA

**Proponents:**

Russell Fillner, Helena, Candidate for Secretary of State

**Opponents:**

Mike Cooney, Secretary of State  
REPRESENTATIVE HAL HARPER, HD 52, HELENA

**Jonathan Motl, Attorney, Reynolds, Motl and Sherwood, Helena,  
representing Montana Common Cause and the Ballot Committee  
who supported Initiative 118 and the Montana League of Women  
Voters**

**Craig Sweet, Legislative Director, Montana Public Interest  
Research Group**

**Opening Statement by Sponsor:**

**REPRESENTATIVE MATT BRAINARD, HD 62, MISSOULA,** stated this bill started off in an all together different form in the House. He thought it an issue of free speech lifting campaign limitations and donation limitations. He believes with free speech there has to be full disclosure for what is being donated and by whom. This is noted as the sunshine bill. It changes some of the elements of campaign reporting and provides for the 21st century and bringing campaign reporting and disclosure to the public. It provides for internet disclosure and electronic submission of financial reports. He then went through the highlights of the bill. He passed out amendments to the bill as per **EXHIBIT (sts77a01)**.

**Proponents' Testimony:**

**Russell Fillner, Helena, Candidate for Secretary of State,** spoke in support of the bill as per **EXHIBIT (sts77a02)**.

**Opponents' Testimony:**

**Mike Cooney, Secretary of State,** spoke in opposition to the bill. He is concerned there would be no limits on the amount of money a political party could give to a candidate. The problem he sees is there is no limit as to how much a person can give to a political party and they then could instruct the political party to fund or give that money directly to candidates of their choice. Currently the bill leaves individual contribution limits the same.

He supports full disclosure and supports disclosing additional information on the internet. It is in the public's best interest and sheds sunshine on the process. The problem is the amount of money spent on political campaigns. Campaign expenditure is brought to light mostly during the campaign process and then people seem to forget about it. Good candidates are being driven out of the process because they do not want to put up with the money race. Voters are being driven out as well thinking their voice does not count and unless they have the money to give to candidates to back up their vote, then candidates do not care. What do we see for the money spent? We are seeing voter

participation go straight down the hill. This bill is not the answer in and of itself. It opens it up to even more money coming into the process and the process becoming even worse. There is a compromise he hopes the committee will consider. **REP. HARPER** will suggest amendments.

**REPRESENTATIVE HAL HARPER, HD 52, HELENA,** stated he submitted a bill on behalf of the Secretary of State this session which would have taken a little different approach to campaign funding. He submitted amendments for the committee to consider as per **EXHIBIT (sts77a03)**. If the amendments were incorporated into some of the good points of the bill, he would rise as a proponent of the bill. He feels the reporting provisions of the bill are good. His concerns lie in that there is no limit on political parties which ends up welding candidates to their parties wishes as that would be the only way to get unlimited money, the bill lifts the aggregate limit on tax for legislative races, there is no limit on independent expenditures, and the retirement provision of campaign debt. He then went through his amendments. He feels the election process needs to be moved back to the people and the problem with unlimited money is the more money raised goes into television ads. Increasingly those ads are negative and increasingly they are turning the voting public off. When access to money is limited, it puts the candidates back to knocking on doors and public forums resulting in getting back in contact with the people.

**Jonathan Motl, Attorney, Reynolds, Motl and Sherwood, Helena, representing Montana Common Cause and the Ballot Committee who supported Initiative 118 and the Montana League of Women Voters,** stated the bill as a starting point, affects three cycles of law in Montana, i.e. the law with its limits in 1994 that was amended by **I-118**, the law with the limits set by **I-118** and the new limits proposed by this bill. All three need to be looked at together because this is a unique area of law for the legislature. He strongly urged the committee not to remove the portion of the bill that allows a double of the limit when there is a contested primary. He handed out his personal data sheet to the committee with figures he uses when looking at election law in Montana. **EXHIBIT (sts77a04)**. He also spoke to political party limits. There have been a number of moves on citizen initiatives in this session. This is another move on a citizen initiative. The people do want campaign finance reform.

**Craig Sweet, Legislative Director, Montana Public Interest Research Group,** stated the committee had heard a very good argument that the current limits are not a free speech issue. The sponsor stated he brought the bill forward because he thought limits were a free speech issue. Their concerns lie with no

limits on political party contributions, independent expenditures and the definition of the election cycle. They are in total agreement on the issue of disclosure via the internet. They agree with the amendment regarding the time period with which contributions are prohibited, however, it also presents a fairness issue with a candidate who has individual wealth giving them a definite advantage. They support **REP. HARPER'S** amendments.

**{Tape : 1; Side : A; Time: 10:51 a.m.}**

**Informational Testimony:**

**Linda Vaughey, Commissioner, Office of Political Practices**, stated they were present today to provide any information needed regarding the on-line reporting provision of the bill. The technology is available to allow them to do this. **Dulcy Hubbard, Administrative Officer, Office of Political Practices**, who supervises compliance of reporting in the office, is also in attendance to answer any questions regarding procedures or past practices.

**{Tape : 1; Side : B; Time: 10:53 a.m.}**

**Questions from Committee Members and Responses:**

**SENATOR HARGROVE** questioned if this bill provided more sunshine than now exists, is there more visibility in campaign expenditures? **Ms. Vaughey** stated currently they are inputting data from the last campaign cycle. They do not anticipate those reports will be ready for publication until the middle of this coming year. On-line reporting would allow them to provide real time information to other candidates and other interested parties.

**SENATOR HARGROVE** questioned if they could do this and when? Is it going to cost money, save money, FTE's? **Ms. Vaughey** stated she would not anticipate any change in FTE's. They are in the process of rewriting some position descriptions now and would anticipate one of the FTE's would be dedicated to data base management. The Department of Revenue has offered to develop the system for them and have the experience of successfully developing and implementing a reporting system that is in use today. She anticipates, if it progresses as projected, they could offer on-line reporting on a voluntary basis to statewide candidates by January.

**SENATOR HARGROVE** stated the proposal in this bill offers quite a bit less work for the Office of Political Practices. He asked

for a comment on the effect of this on their office. **Ms. Vaughey** stated she was rather new in this position. It would seem to her if they were absolutely sure that everything the legislators passed as legislation was going to withstand Constitutional challenge, then all the complaints and court cases would go away. The laws that are made are defined ultimately in the Courts often times. She sees a decline in the workload within the office. On-line reporting would save a lot of data entry work.

**SENATOR HARGROVE** asked if this had anything to do with in-kind contributions? **REP. BRAINARD** stated it would include in-kind as the present definition. **SEN. HARGROVE** asked if it had anything to do with constituent service account? **REP. BRAINARD** stated it did not. Following the last reporting and after paying off debts, if there is a balance left in the campaign account, it would be consigned to a constituent service account or they donate it to a charity. The present system of getting rid of that balance would not be changed. **SEN. HARGROVE** stated, implied in the legislation is a direct trade off between sunshine and money. In other words the more the money is eliminated, the less effective it is, or at least it will be put into a proper prospective. Is that your intent? **REP. BRAINARD** stated there is a correlation. It has been alluded that individuals, who are extremely wealthy, are able to fund their own campaigns. When the public can see on the internet that someone is loaning himself \$1 million dollars for a House District race, that will appear excessive and people will see where that is coming from. If there are no local contributions and he is trying to the buy the race for himself, he feels the public will react to that.

**SENATOR WELLS** stated there were comments made by the opponents that indicate by eliminating the primary and general cycles and making it all one election cycle, you tend to punish candidates that have two races. How does the sponsor view that and what does the bill do? **REP. BRAINARD** stated he feels a person who does not have a primary is actually punished. The reason is the primary causes the individual candidate to get out earlier in the season, they have funding for that race and they are also getting public opinion in that race. The signs, posters and mailings are all making a contact with the same voters who will be voting in the Fall. An individual who is going to run can get a straw candidate to run against him in the primary and that way easily doubles the donations. You have an individual who files, pays the \$15, but never does anything in the primary. The other person can raise the maximum amount of contributions and then raise those again in the general. For the individual who does not have a primary, the deck can definitely be stacked against them. He does not see this as just being one race. When you file for election, it is all one race. If the supporters of

**I-118** really want to eliminate money and advantage, it looks like this helps to accomplish that as well.

**SENATOR WELLS** stated there was a comment made that more money is chasing the voters away. How does the sponsor feel about that?

**REP. BRAINARD** stated he felt that was a strong argument. In his District there has not been a significant change in the number of voters who have turned out for each General Election, in fact, he has gotten more people to vote in his District than used to. It does not seem money is driving people away, it might just be the way people conduct campaigns and the kinds of people who run as candidates.

**SENATOR TESTER** questioned the status of a previous bill for internet service in their office? **Ms. Vaughey** stated **HB 58** is presently tabled in Finance and Claims. **SEN. HARGROVE** stated there is an amendment being offered to bring it out by getting \$200,000 from the Justice Department. He thinks it will return and there will be some money for it.

**SENATOR TESTER** stated he agreed with internet reporting but he feels it puts some people in an interesting situation if, in fact, the office is not funded to put up that internet site. How would a statewide candidate post their financial report without an internet site? **Ms. Vaughey** stated she hopes there will be money that comes along with the bill to allow them to develop the on-line report. Currently there is no avenue for them to do that. They could develop a website within the confines of their current budget and could post general information for people to download. **SEN. TESTER** stated it says it could be prescribed by the Commissioner. Is it anticipated if there were no internet site it would be put upon the candidate to put it on an internet site? **Ms. Vaughey** stated that would be difficult to do and not a practical method.

**SENATOR TESTER** questioned if the Office of Political Practices is not given the money to establish an internet site, and this bill is passed, is not the Commissioner of Political Practices being put into an absolute no-win situation? **REP. BRAINARD** stated there does need to be a degree of coordination on this issue. There is a vehicle by which this operation can be funded and he believes the Senate will look at that and do the coordination necessary if they decide this bill should be passed.

**SENATOR TESTER** questioned why political committees are excluded?

**REP. BRAINARD** stated right now there is an anomaly in the laws. There is a fundamental problem with the independent campaign committees. They are essentially ungovernable, they have complete rights of free speech. An individual can go out and

campaign for somebody or against somebody as long as there is no contact with that individual and there is no guidance from that individual running for office. An unlimited amount of money can be spent and can be raised to influence that election. The minute someone files to run for office and forms the necessary structure of a political campaign committee for their own campaign, they automatically fall under laws that limit donations and limit speech. If **REP. HARPER'S** suggested amendments are followed from **HB 451**, they are still constricted once they have filed for political office because they are on a political campaign committee. However, individuals and separate organizations identified as "independents", have an unlimited ability to spend and influence the outcome of the campaign. He feels the political parties are formed for political purposes. They should accept money and channel it back through the parties so it is clearly identified where the money is coming from and why it is being spent.

**SENATOR TESTER** questioned if it was his intent to make the political process more to the common people and eliminate some of the influences the rich have on the process? **REP. BRAINARD** stated he did not think you could get more common than he is in this room. He is not wealthy and is involved in the political process. When it comes down to the amount of money being spent, he has been outspent almost 2:1 in every election and he has won three elections. He does not think money, per se, can buy an election. The common man is not being eliminated.

**SENATOR TESTER** questioned if it was his intent to limit the rich and bring the common person more active in the political process? **REP. BRAINARD** stated he does not know how limits are placed on the rich. An effective political campaign is not run on your own money. There has to be donations from people that support you because it is all about support.

**SENATOR TESTER** questioned if donations were limited right now? **REP. BRAINARD** stated yes they are. **SEN. TESTER** said under the mechanism in this bill it appears donations to a political party would not be limited whatsoever. If Jane Fonda wanted to give the Democratic Party \$1 million dollars with no earmarks, could the Democratic Party use that money? Right now there is an \$800 limit for Senate candidates and they gave him \$20,000 to \$30,000. **REP. BRAINARD** stated as he understood it, there was an influx of money to the Democratic Party in the last session and they had some they could not spend. They transferred \$68,000 to an independent political campaign committee. He feels the money would have been better directed going directly to the candidate. Why not limit the amount of money to donations in the state or donations from the District? With money coming into a political

party from another state, another party could come in and then it goes to another independent campaign committee. He does not think that is very forthright. **SEN. TESTER** asked if he would rather see \$20,000 with no limits go directly to the candidate? **REP. BRAINARD** stated whether it is \$5,000 or \$20,000, the party will have to make the decision where the money will go. If the party dumped an abnormal amount of money into a particular race, the public would see and understand that and vote accordingly.

**SENATOR TESTER** stated according to the amendment, the candidate may not accept a contribution or deposit a contribution 10 days after the election. If he receives a bill about Dec. 15 is he precluded from taking office? **REP. BRAINARD** stated it does not preclude him from taking office, it means he has to pay his bills. **SEN. TESTER** said the bill says contributions cannot be received after 10 days and assuming he has spent down to zero and receives a bill after that affect, he would not be able to pay for that bill because he would have no money in his account. Since he is after the 10 day deadline, would he be out of luck? **REP. BRAINARD** stated he would have to pay the bill out of his own pocket, he would not be able to receive a contribution to pay for it. **SEN. TESTER** said he does not see any differentiation made in contributions? **REP. BRAINARD** stated when individual contributions are referred to, the candidate is not limited himself "as the individual". Candidate is separated out from "the individual". The candidate operates as the candidate. **SEN. TESTER** stated he did not think that was clear in the bill. In Section 5 it says "a candidate may not accept a contribution or deposit a contribution". He is making a contribution to his campaign. **REP. BRAINARD** stated he does not spend money he does not have in his campaign. He makes sure the income and outgo balance. That is the only way to get off on the right foot in this business in the first place. He feels it is quite possible to close out the campaigns in an orderly fashion. It may just take a little different planning is all.

**SENATOR TESTER** stated he assumes the effective date is October 1? **REP. BRAINARD** stated he believed so. **SEN. TESTER** stated Secretary of State Cooney is running for Governor and he assumes he has already collected a few dollars. With the effective date being October 1 and since there is no differentiation in the bill between primary and general, if he were to donate \$100 and earmark it for either the primary or general election and it is reported out, how is the political practices office going to take care of this problem? **REP. BRAINARD** said as it now stands, if you donate money at this point and someone else declared to run, he believes the campaign treasurer would have to mark that for the primary.



**SENATOR HARGROVE** said **REP. HARPER** suggested the more money one gets, the more TV they will have, the more negative people will get and it will turn people off. He wonders if a scenario was not just written to show how money is bad? Negativity is very **SENATOR HARGROVE** said **REP. HARPER** suggested the more money one gets, the more TV they will have, the more negative people will get and it will turn people off. He wonders if a scenario was obvious in most races and it does tend to turn people off. If a lot of money is received and spent in that fashion, they are shooting themselves in the foot. Maybe there is a balance that strikes naturally. **REP. HARPER** stated money is not necessarily bad. In a political race, money is a good sign if you want to win. The way campaigning has gone and, unless something is done to turn it around, the way it will continue to go, is this money is funneled into TV. If you look at a statewide campaign and then sit down with someone that knows what they are talking about, they are going to provide a basic budget and then say here is the extra plug that will be needed for TV money depending on what the opponent does. Without it the candidate will not win. That is the problem he and the Secretary of State are trying to address.

*{Tape : 2; Side : A; Comments : Time: 11:26 a.m.}*

**SENATOR HARGROVE** stated in this business we act like a bacteria culture, we keep growing until we start doing too much and we kill ourselves and the activity. Is money necessarily a bad thing even if this were to be totally unlimited? Does it give an indication of the person's ability to relate with people, to earn money, to go out among their friends, neighbors, businesses and so on and prove themselves that an election is not just a vote? You have to prove yourself a whole lot of ways. Is this an artificial thing that should not be part of the election process? **SECRETARY COONEY** stated he is not opposed to money being involved in the process. He feels good about every \$5 or \$10 check received because it means there is support behind that check. What concerns him is when money is so prominent on one side or the other and no matter how hard a candidate may be working, if they can't at least be competitive on the dollar side of things, typically they do not have a choice. Basically what they find is money tends to speak volumes. They do not want to take money out of the process. If someone knows they can spend more money than anyone else, it gives him a tremendous advantage. If that money is spent unwisely, it could hurt him. If he is surrounded by the best in the business and they control things the way they should be controlled, he has a tremendous advantage over anyone and the numbers simply prove that out.

Money does not produce good democracy. Is money the only evil driving people away from the process? Absolutely not. Actions taken during the session will encourage or drive people away. They do know for a fact, that through polling or other incidences, voter participation has continued to be on a decline for the past many years. Money is not the only factor but it is a factor that can be dealt with legislatively.

**{Tape : 2; Side : A; Comments : Time: 11:33}**

**Closing by Sponsor:**

**REPRESENTATIVE MATT BRAINARD, HD 62, MISSOULA,** stated a lot of interesting questions have been raised. A lot depends on philosophy and the way the bill is interpreted. There is a clear problem with the limitations placed on candidates and political parties when independent campaign committees are allowed to run with no limits at all. There are some substantial rulings in favor of independent expenditures and it is a matter of free speech. When it comes to campaign limitations there was a decision made by a court in Alaska that ruled it was an infringement on free speech. All in all we have to find some way to balance the scales. Anything that diverts the money and energy away from the campaign of that individual candidate is detrimental to the process.

The current law is influenced by **I-118**. It never placed any restrictions on that wealthy individual who is able to fund their own campaigns. That was conveniently left out of **I-118**. The best way to probably deal with that is to allow the parties to collect the money and support the candidates.

This could be considered as an amendment that a political party could not donate in a primary race. Until a primary is concluded, the party does not have a candidate. No party money could be given to a candidate until they passed the primary election.

He does not think this bill is going to affect the outcome of **I-118** and what happens in the Court. Some of the provisions in the bill such as the 48 hour reporting of campaign donations of \$300 or more will actually be very beneficial if the limits imposed by **I-118** are lifted. If the Court finds **I-118** unconstitutional, the reporting provisions and closing campaign accounts, will be tantamount to keeping a clean operation.

**ADJOURNMENT**

Adjournment: 11:43 A.M.

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SEN. MACK COLE, Chairman

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KERI BURKHARDT, Secretary

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JYL SCHEEL, Transcriber

MC/KB

**EXHIBIT** (sts77aad)